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Supreme Court, U.S.
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No. 00-1049

IN THE

Supreme Court of the United States

DOUG CASS and ACTIVE APPLIANCE CORPORATION,

Petitioners,

v.

COUNTY OF SUFFOLK and COUNTY EXECUTIVE OFFICES OF CONSUMER AFFAIRS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

REPLY BRIEF

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This brief is submitted in Reply to Respondents brief in Opposition and in further support of Petitioners Writ of Certiorari to the Supreme Court for the United States of America.

I.

PETITIONER COMMENCED A VALID ACTION ACCORDING TO THE STATUTE

Petitioner maintained a valid cause of action on November 24, 1997 pursuant to C.P.L.R. § 304. All of the requirements for commencing an action according to the statute were satisfied with their earlier filing on November 21, 1997 of an Order to Show Cause and Petitioner's Affidavit in Support, which contained all of the essential elements of a Petition. The subsequent filing on November 24, 1997 was simply an extension of Petitioner's earlier filing of November 21, 1997 which sought similar relief. The original papers were simply "Amended". At no time were the original papers ever "withdrawn" by Petitioner. Neither were the original papers ever "dismissed" by any Court on the basis that they were defective. In each of the cases cited by Respondents the original papers had been either "dismissed" or "withdrawn".

For example, in *Matter of Gershel,* Petitioner had withdrawn their original Order to Show Cause prior to it being dismissed by the Court on the basis of improper service upon the Respondent. Only when a case is validly disposed of either by dismissal or by consent to withdraw may the Court consider an action dissolved. *See Matter of Gershel v. Porr*, 89 N.Y.2d 327, 332 (1996). This is not the case here.

II.

PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED

Respondents further claim that Petitioner's fourteenth amendment due process rights were not violated. In their defense they cite the cases of *Gronne v. Abrams* and *Werner v. State of Utah*. *Gronne v. Abrams*, 793 F.2d 74 (2d Cir. 1986). *Werner v. State of Utah*, 32 F.3d 1446 (10th Cir. 1996). However, reliance on these cases is misplaced. First, *Gronne*, involved a statute which was enacted in response to a perceived problem of increasing malpractice rates for physicians. The statute in *Gronne* required the plaintiff to appear before a medical review panel which was not binding on the parties but merely went to the weight of the evidence should the matter proceed to the Court. This is not the case here. Here, the statute as applied to Petitioner denied him any right to have his case completely heard before a Court of competent jurisdiction. Additionally, reliance on *Werner* is misplaced. In *Werner* the Court sought to place certain restrictions to limit a litigant from bringing a claim on a pro se basis because in the past he had filed numerous frivolous actions. Such is not the case here. Here, Petitioner was represented by counsel and his purpose for the litigation was to request judicial review of an administrative decision by the Suffolk County Executive Office of Consumer Affairs which revoked his license to engage in the appliance repair business.

CONCLUSION

Petitioner, throughout the entire litigated period always maintained a valid cause of action. Petitioner's due process rights were violated in that he should not have been denied his fundamental right to have his case heard before a Court of competent jurisdiction so that an administrative decision may be reviewed because of the state's statutory requirement to pay a fee for a second index number to commence a duplicate action when one was already pending and valid.

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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